

Notice of Class Action Settlement Agreement

Dougie Lester v. Pay Car Mining, Inc., et al.,

Case No. 5:17-cv-00740

United States District Court for the Southern District of West Virginia

A class action lawsuit is currently pending in the U.S. District Court for the Southern District of West Virginia, Case No. 5:17-cv-00740. The named plaintiff and the certified class representative in this action is Mr. Dougie Lester. Mr. Lester worked for Pay Car Mining, Inc. and/or the other Defendants in McDowell County, West Virginia. Mr. Lester alleges that from September 2, 2012 through December 1, 2012, Pay Car Mining, Inc., Bluestone Industries, Inc., Keystone Service Industries, Inc., Mechel Bluestone and/or Bluestone Coal Corporation (“Defendants”) directly or indirectly, on their own or jointly, laid off over fifty of their employees at the Pay Car Mine, including the Plaintiff, without giving these employees advanced notice of their layoffs as required by the Worker Adjustment and Retraining Notification (“WARN”) Act. The Defendants deny these allegations.

The Court has ordered that the class action may go forward against the Defendants. The class is defined as:

All full-time employees of Bluestone Industries, Inc. (“Bluestone”) who were terminated from employment, or subject to a reduction in force, at the Burke Mountain Mine Complex, including at the Pay Car Mine, from September 2, 2012 through December 1, 2012.

The Parties in the case listed above have reached a settlement for a total value of \$1,040,000.00, including the payment of awards to each class member in three installments. This is described more fully below. This settlement must be approved by the Court before it is distributed. This Notice informs you of your rights to claim an award under that settlement, or to decline the award by opting out of the settlement. Please read it carefully.

The Court has authorized this Notice of the Settlement reached by the Parties in the class action lawsuit referenced above. A Final Settlement Hearing is set for _____ on _____ at the federal court house in Beckley, West Virginia.

The purpose of this notice is to explain the nature of the lawsuit and to inform you of your legal rights. If you have any questions, contact Sam Petsonk with the Workers’ Rights Program at Mountain State Justice in Beckley: (681) 207-7510.

A. THE NATURE AND COURSE OF PROCEEDINGS.

This lawsuit sought to recover a penalty under the WARN Act, equal to sixty days of wages and benefits, because the Defendants allegedly failed to provide the two months of advanced notice prior to terminating or reducing the workforce, including you, at the Burke Mountain Strip Mine in 2012, allegedly in violation of the WARN Act.

On January 20, 2017, Mountain State Justice filed this lawsuit on behalf of Mr. Dougie Lester, seeking to recover damages under the WARN Act for all miners at the Burke Mountain Mine Complex, including K2 Plant, who were laid off during the specified period. On March 1, 2017, the Defendants filed a Motion to Dismiss, arguing that the claim was subject to a two-year statute of limitations. Mountain State Justice opposed that Motion, and argued for a five-year statute of limitations. On July 3, 2017, the Court denied the Motion to Dismiss and found that the claim was subject to a five-year statute of limitations and thus could go forward towards trial. On June 6, 2018, the Court certified the case as a class action.

Settlement. On July 12, 2018, the Parties reached a Mediation Agreement to resolve this litigation, providing \$1,000,000.00 as a common fund for the miners who were laid off from full-time employment at the Burke Mountain Mine Complex from September 2, 2012 through December 1, 2012. Defendants also agreed to pay \$40,000.00 in additional fees set forth below.

The Court has not rendered judgment on the merits of the claims in the case.

B. THE PROPOSED SETTLEMENT.

(1) **Relief:** The details of the proposed settlement are set forth in the attached document labeled “Mediated Settlement Agreement.” **If you would like to claim an award in this case, you must contact the class counsel, Mountain State Justice, Inc., 223 Prince Street, Beckley, WV 25801, (681) 207-7510.** The attorneys at Mountain State Justice represent the class---that is, **they represent you and not Bluestone.**

(a) **Eighty-four proposed class members.** The class counsel, who represent Mr. Lester, have researched the case extensively and currently believe that there are eighty-four employees who are entitled to an award. The class counsel will determine the number of verified class members based on the responses to this Notice, and will cross-reference those responses with the payroll records to verify the class members.

(b) **Common fund for class members.** The common fund for distribution to the class members would equal \$850,000.00. If fully 84 class members are verified as having been laid off at the Burke Mountain Mine Complex during the class period, then each of those awardees would receive \$10,119.04 under the proposed settlement. These amounts are to be paid by the Defendants to class counsel, who will hold the payments in trust, verify the sufficiency of the funds, and issue checks to individual class members as promptly as possible once the Court approves the settlement.

(c) **Attorney fees and costs.** The attorney fees and costs payable to class counsel (Mountain State Justice) would equal fifteen percent of the agreed-upon settlement fund, or \$150,000.00.

(d) **Three installments.** The Defendants agree to pay in three equal installments to Mountain State Justice by no later than: August 31, 2019, February 28, 2020, and August 31, 2020. Mountain State Justice will administer the settlement by dividing those sums equally and issuing checks to the class members. For example, if 84 class members are verified, each of those class members would receive three installments of \$3,373.01. The payments to class members shall be issued as soon as practicable after Mountain State Justice receives each installment from Defendants. If fewer class members are verified, each one will receive a correspondingly higher

payment; and similarly if more are verified, a correspondingly lower payment in order to ensure equality among members.

(e) **Daily penalties for late payment by Defendants.** Defendants will enter a Judgment Order for the amounts stated herein which the Plaintiffs agree will not be executed upon unless the Defendants default upon the payment of the amounts stated herein within the periods stated herein. In lieu of the legal rate of interest, the Defendants agree to pay a penalty of One Thousand Dollars (\$1,000.00) per day for each day a payment due hereunder is late with the right of a fifteen (15) day cure period. Should a payment be late and not cured within 15 days of the due date, then the penalty of One Thousand Dollars (\$1,000.00) will be retroactive to the original due date of the payment.

(f) **Class representative fee.** The Defendants agree to pay to the class representative the sum of \$10,000 due within 60 days of July 12, 2018.

(g) **Class administration fee.** The Defendants agree to pay a class administrative fee to Mountain State Justice of \$30,000.00 due within 60 days of July 12, 2018 in order to cover the costs of the administration of the claims, verification of class members, and management of class notice.

(h) **Cy pres (leftover amounts).** Any unclaimed portion of the settlement proceeds will be distributed to a charitable or public program in McDowell County, West Virginia.

Class counsel and the class representative consider the settlement to be in the best interest of the class because it represents roughly the straight-time damages to which the miners would be entitled if they tried the case and won, and it avoids the delay of additional litigation.

(2) **Hearing:** The court will hold a fairness hearing which will take place at _____ **in Beckley, West Virginia.** Any class member may attend the fairness hearing, but you do not need to attend the hearing in order to receive the settlement.

(6) **Release:** If you accept a settlement, you as a class member will release and forever dismiss (“Release”) all of the claims under the WARN Act arising from the 2012 layoff that the Plaintiffs asserted in their Complaint against Defendants.

C. YOUR CHOICES:

(1) **Accept the settlement.** If you have not already done so, contact Mountain State Justice, Inc., (681) 207-7510, in order to confirm your contact information and verify that you were laid off from Burke Mountain (including Pay Car Mine or K2 Plant) during the specified period. After the Final Settlement Hearing, you will receive instructions on claiming your award under the settlement.

OR

(2) **Object to the settlement.** If you choose to object to the settlement, you must submit your objection in writing to the Clerk of the Court, U.S. District Court for the Southern District of West Virginia, P.O. Drawer 5009, Beckley, West Virginia 25801 **on or before**

_____. Any class member who has filed an objection with the Clerk may appear at the fairness hearing and be heard (individually or through his/her own counsel).

This is a description of the case in general and does not cover all of the issues in detail. You may review the pleadings and all other documents in this case at the office of the Clerk of the Court, who will make the file available to you for inspection and copying at your expense.

D. WHAT TO DO NOW TO PARTICIPATE IN THE SETTLEMENT.

(1) **If you have not done so, call Mountain State Justice (Sam Petsonk) at (681) 207-7510.** Make sure that your correct address is on file. If this notice was sent to the wrong address, you should immediately send a letter to Mountain State Justice at the address below stating your correct home address. The attorneys at Mountain State Justice represent the class. You are not required to attend the Court proceedings or retain your own lawyer. But, if you want your own lawyer to speak or appear in Court, separate from Mountain State Justice, you can retain a lawyer for that purpose to enter an appearance in the case, and at your own expense.

(2) If the Court approves the settlement, you will receive a final notice stating the number of class members, the specific amount that you will receive, the timetable for receiving payments, and the process for claiming your payments.

(3) If you have any other questions, you may consult with class counsel, Sam Petsonk or Bren Pomponio, at (681) 207-7510, or by mail at Pay Car Class Settlement, Mountain State Justice, Inc., 223 Prince Street, Beckley, WV 25801.

(4) **DO NOT ADDRESS QUESTIONS ABOUT THE SETTLEMENT OR THE LITIGATION TO THE CLERK OF THE COURT OR TO THE JUDGE.**

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Class counsel